

GUIDELINES FOR DEVELOPING AND IMPLEMENTING CONSORTIUM ANTIDRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS

Introduction

The Federal Aviation Administration (FAA) has permitted aviation employers to utilize consortia to assist them in implementing antidrug programs to comply with the antidrug and alcohol misuse prevention program (AMPP) regulations, 14 CFR part 121, appendices I and J, and 49 CFR part 40. As a result, the FAA has allowed consortia to submit proposed antidrug plans and AMPP certification statements to the FAA for approval, and upon approval, offer their programs to aviation employers.

Upon obtaining approval of its program from the FAA Drug Abatement Division, a consortium is responsible for complying with all provisions of part 121, appendices I and J, and part 40. If it fails to do so, the aviation employers it provides services to may be in noncompliance with the regulations, and the FAA may revoke the consortium's program approval.

Antidrug Plan

The attached plan format contains the essential elements that a proposed consortium will offer aviation clients in order for them to meet the regulatory requirements. Most FAA-approved consortia provide all the elements identified in the plan format. However, some consortia only provide limited services with the employer implementing certain provisions on its own. If your consortium will not be providing one or more of these elements, you must indicate that fact in your plan. An example is a consortium which does not provide an employee assistance program (EAP). In such a case, employers would be required to contract directly for or use internal sources to implement an EAP.

AMPP Certification Statement

Consortia offering alcohol testing services must submit certification statements setting forth the aspects of the AMPP that the consortium intends to provide to aviation employers (e.g., random testing, substance abuse professional, etc.) and certify the AMPP will be implemented in accordance with the regulations. A sample certification statement is attached.

Approval of a consortia's plan and/or certification statement does not automatically extend to those individual aviation entities that may choose to join the consortium. A separate antidrug plan and/or certification statement for each potential consortium member must be submitted to the FAA for review and approval. Upon approval of the consortium plan, you will be sent the member-specific plan format and certification statement.

Please return the completed consortium plan and/or certification statement in ***duplicate*** to:

Federal Aviation Administration
Drug Abatement Division, AAM-800
800 Independence Ave., SW, Room 803
Washington DC 20591

CONSORTIUM ANTIDRUG PROGRAM FORMAT

(Address all data elements)

1. Consortium Name/Address/Telephone Number/FAX Number

2. Consortium Antidrug Program Manager Name/Telephone Number

3. Medical Review Officer(s) (MRO) Name/Address/Telephone Number

The MRO must be a licensed physician, either a Doctor of Medicine (MD) or a Doctor of Osteopathy (DO).

Describe all required duties and responsibilities to be performed by the MRO(s) as outlined in 49 CFR part 40 and 14 CFR part 121, appendix I or a specific statement that the MRO(s) will perform all duties and determinations in accordance with the requirements of 49 CFR part 40 and 14 CFR part 121, appendix I.

4. DHHS-Certified Laboratory(s) Name/Address (PRIMARY)

Identify the DHHS-certified laboratory(s) that will perform testing of the primary urine specimens.

5. DHHS-Certified Laboratory(s) Name/Address (SPLIT SPECIMEN)

Identify the DHHS-certified laboratory(s) that will test split specimens in the event of a verified positive test result. *Since the selection of the second laboratory for testing of split specimens is an employer decision, consortia should work with employers to determine how the second laboratory will be selected and may NOT simply select a laboratory on behalf of their members.* If a member company's employees will have the option of selecting any DHHS-certified laboratory to test the split specimen, the plan should contain a statement to that effect.

6. Blind Performance Testing

Indicate that the consortium will submit to its DHHS-certified laboratory(s) blind performance tests in conformance with 49 CFR 40.31(d), which requires 3 blind samples per 100 specimens.

7. Specimen Collection

Indicate if the consortium will conduct collections or if an outside source will be hired to conduct them. If the collections will be conducted by an outside source, provide the name, address, and telephone number of the collection contractor, but do NOT list each collection site/facility.

Include all required specimen collection and chain of custody procedures or a specific statement that each specimen collector will follow the specimen collection and chain of custody procedures contained in 49 CFR part 40.

8. Employee Assistance Program (EAP) Manager Name/Address/Telephone Number

Indicate if the consortium will conduct the EAP training or if an outside contractor will be hired to perform this function. If an outside contractor will perform the training, provide the contractor's name, address and telephone number.

9. EAP Education and Training

Describe the EAP program components; they must include all requirements contained in 14 CFR part 121, appendix I.

- Education. Must include at least the display and distribution of informational material, *employer's* policy regarding drug use in the workplace, and a community service hot-line telephone number for employee assistance.
- Employee Training. Must include training on the effects and consequences of drug use on personal health, safety and the work environment, and the manifestations and behavioral cues that may indicate drug use and abuse.
- Supervisor Training. Must include training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. Supervisory personnel who will make reasonable cause testing determinations are required to receive at least 60 minutes of initial training and reasonably recurrent training.

EAP training given to employees and supervisors must be documented.

10. Testing

Indicate that consortium member's employees will be tested only for the five prohibited drugs: marijuana, cocaine, opiates, PCP, amphetamines.

A. Pre-employment

Describe pre-employment testing procedures, including the aviation employers' requirement to inform applicants for safety-sensitive functions of the testing requirement and the drugs for which testing will be performed.

B. Periodic

Describe periodic testing procedures.

The requirement to conduct periodic drug tests applies to aviation employers, not the consortium. Employers implementing *new* antidrug programs are required to conduct periodic drug tests on each covered employee who is required to hold a part 67 airman medical certificate during the first calendar year of implementation of the employer's antidrug program. Periodic testing may be discontinued after the employer has conducted a full year of random testing. Therefore, if any employer has discontinued periodic testing, that employer should not be required to reinstate periodic testing simply because the employer has joined a new consortium.

C. Random

Describe random testing procedures including:

- ❖ *Composition of the random selection pool.*
 - *Employees not covered by the DOT rules may not be part of the same random pool with DOT covered employees.*
 - *Indicate if individuals covered by other DOT rules will be included in the random pool with FAA covered employees.*
- ❖ *Testing rate.*

C. Random (cont'd.)

- ❖ *Selection process.*
 - *Selection methodology - random number table or computer-based random number generator.*
 - *Type of unique, unidentifiable employee number used.*
 - *Each individual in the pool must have an equal chance of being selected and tested.*
- ❖ *Frequency of selections.*
 - *The FAA recommends that selections be conducted at least quarterly.*
- ❖ *Unannounced testing.*
 - *The date and time of testing must remain unknown to the testing pool until just prior to collection.*
 - *Random testing should be done as soon as possible, but not more than a **maximum** 2 hours from notification to collection if the employee must travel a distance to the collection site.*

D. Post-accident

Describe post-accident testing procedures for aircraft accidents only (as defined in 14 CFR part 121, appendix I), including timeliness requirements.

Consortia cannot make post-accident testing determinations. This is a non-delegable duty of the employer.

E. Reasonable Cause

Describe reasonable cause testing procedures.

- Part 121 certificate holders or other employers who employ more than 50 employees who perform safety-sensitive functions, must have at least two supervisors, one of whom is trained, substantiate and concur in the decision to order a reasonable cause drug test.
- Employers, other than part 121 certificate holders, who employ 50 or fewer employees who perform safety-sensitive functions, need only one trained supervisor to order a reasonable cause drug test.

Consortia cannot make reasonable cause testing determinations. This is a non-delegable duty of the employer.

F. Return to Duty

Describe return to duty testing procedures.

Include duties/determinations to be performed by the MRO and substance abuse professional.

G. Follow-up

Describe follow-up testing procedures.

11. Recordkeeping/Confidentiality:

A. Recordkeeping

Consortia may receive/maintain the following:

- All records concerning drug testing (including test results).
- Information needed for operating a drug program (names of employees in random pool, random selection lists, copies of notices sent to employers of selected employees).
- Employer's copy of the custody and control form may pass through the consortium, but must be forwarded to the actual employer.

Record retention requirements apply to records maintained by consortia in the same way they apply to employers. Describe the consortium's security measures for ensuring that confidential employee records are not available to unauthorized persons, if such records are going to be maintained by the consortium.

B. Confidentiality

Individual test results, rehabilitation information, and other confidential information may not be released without the written consent of the individual involved with the exceptions provided in 14 CFR part 121, appendix I, including the release of test results to State agencies. *Blanket consent forms authorizing the release of an individual's testing information by the consortium to a third party are not permitted.*

Consortia must follow all confidentiality requirements applicable to employers.

Describe the consortium's procedures for releasing confidential employee records, if such records are going to be maintained by the consortium.

12. Implementation Date

Consortia may not implement their programs prior to receiving approval, nor may they "sell" their program to potential aviation clients until the consortium is approved. A statement "upon plan approval" is acceptable as an implementation date.

13. Changes in Membership

Consortia are required to notify the FAA Drug Abatement Division within 10 working days of any changes in any FAA-approved members, such as those who leave the consortium or are dropped by the consortium.

14. Signature/Printed Name/Date

The consortium antidrug program manager should sign and date the plan submission.

Please return the completed plan in <u>duplicate</u> to:	Federal Aviation Administration Drug Abatement Division, AAM-800 800 Independence Ave., SW Washington DC 20591
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SAMPLE CERTIFICATION STATEMENT for a Consortium

ABC CONSORTIUM
FAA ALCOHOL MISUSE PREVENTION PROGRAM (AMPP)
CERTIFICATION STATEMENT

PART I - CONSORTIUM INFORMATION

1. CONSORTIUM MANAGER NAME/ADDRESS/TELEPHONE:

*Mary Jones, Manager
Human Resources Division
4444 North Drive
Washington, DC 20000
(202) 555-5555*

2. SPECIFIC SERVICES CONSORTIUM WILL PROVIDE:

- A. Alcohol Misuse Training/Educational Materials
- B. Alcohol Breath Testing
- C. Substance Abuse Professional Services
- D. Types of Testing:
 - a. Pre-employment
 - b. Random
 - c. Post-accident
 - d. Reasonable Suspicion
 - e. Return to Duty
 - f. Follow-up
- E. Other Services: Preparation of annual report, EBT calibration and maintenance

PART II - CERTIFICATION STATEMENT

I certify that I am authorized to represent *ABC Consortium* in this matter, that the information in Part I of this document is correct to the best of my knowledge and belief, and that *ABC Consortium* will comply with the provisions of the Federal Aviation Administration's alcohol misuse prevention regulations and with the terms herein.

(Name)

(Date)

(Title)

ROLE OF CONSORTIA AND THIRD-PARTY ADMINISTRATORS

On July 25, 1995, the Department of Transportation (DOT) published a notice in the Federal Register (60 FR 38204) providing guidance on the role of consortia and third-party administrators (C/TPAs) in the DOT drug and alcohol testing programs. It spells out the Department's views and interpretations of the permissible role and obligations of C/TPAs, and applies to all participants in the programs of all the DOT operating administrations. Many of these provisions have mode-specific exceptions, and the FAA will be providing additional guidance as it is finalized.

General Role and Functions of C/TPAs

- ❖ Employers are permitted to use C/TPAs.
- ❖ Employers must ensure that the C/TPA performs its service in accordance with the applicable rules.
- ❖ C/TPAs may operate random testing programs and facilitate other functions (e.g., contracting with laboratories or collectors, perform collections)
- ❖ C/TPAs may combine employees from multiple entities, including employees from more than one industry, in a random pool. However, any C/TPA including aviation employees in combined random pools must be approved by the FAA. (NOTE: Employees not covered by DOT shall not be part of the same random pool with DOT employees.)
- ❖ C/TPAs may ensure that follow-up testing is conducted in accordance with the established schedule.
- ❖ C/TPAs may act as an agent of the employer - can receive test results without the written consent of the employee.
- ❖ Limits on use/obligations of C/TPAs as agents:
 - ◆ C/TPAs cannot make reasonable cause/suspicion, post-accident, or refusal determinations.
 - ◆ Employer must ensure that employees who test positive or violate the rules are removed from performance of safety-sensitive functions.
 - ◆ Employer is responsible for compliance.
 - ◆ C/TPAs cannot act as program managers.
 - ◆ C/TPAs must transmit quarterly laboratory statistical summaries to employers.
 - ◆ SAPs may not refer employees to their private practice or to a person/organization from which the SAP receives remuneration or has a financial interest, even if employed by C/TPA.
 - ◆ C/TPAs ensure that laboratories receive only the appropriate copies of the drug custody and control form.

Confidentiality, Test Results, Recordkeeping

- ❖ C/TPAs may receive and maintain all records concerning drug and alcohol testing programs, including test results. (See related bullet under MRO Issues.)
- ❖ C/TPAs may maintain duplicate records where employers must keep certain information in their files (e.g., for purposes of review during inspections).
- ❖ C/TPAs may maintain information needed for operating a drug/alcohol program and may make random selections and notifications.
- ❖ C/TPAs may receive the employer's copy of the custody and control form, but must forward it to the employer.
- ❖ C/TPAs must follow all confidentiality requirements:
 - ◆ May not release test results without a specific, written consent from the employee.
 - ◆ May not use blanket consent forms.
 - ◆ Must establish confidentiality and security measures to ensure confidential records are not available to unauthorized persons.

Medical Review Officer Issues

- ❖ Employers may obtain MRO services through C/TPAs.
- ❖ If an MRO is employed/contracted for by a C/TPA, the MRO must perform duties independently and confidentially.
- ❖ Only those C/TPA staff members who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions.
- ❖ Confirmed test results must be sent directly from the laboratory to the MRO.
- ❖ MROs must conduct final interviews with employees and make the decision to verify a test result as positive or negative.
- ❖ MROs and BATs must send final individual test results directly to the actual employer as soon as the result is available. *It is not appropriate for the MRO/BAT to send the result only to the C/TPA, which subsequently retransmits them to the employer.*

Enforcement

- ❖ Employers may not contract away their responsibility to comply with DOT rules.
- ❖ The employer, not the C/TPA, must answer to the DOT for noncompliance with the rules if the C/TPA does not properly carry out the regulatory requirements.